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EXAMINER				
JUNTIMA, NITTAYA				
ART UNIT		PAPER NUMBER		
2462				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/748,782

Applicant(s)

CORTEZ ET AL.

Examiner

NITTAYA JUNTIMA

Art Unit

2462

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to the RCE filed on 11/23/2009.
2. **Claims 1-5 and 7-11** are pending (claims 6 and 12-25 were canceled).

Continued Examination Under 37 CFR 1.114

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/23/2009 has been entered.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 11 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The broadest reasonable interpretation of a claim drawn to a computer readable medium (also called machine readable medium and other such variations) typically covers forms of non-transitory tangible media and transitory propagating signals *per se* in view of the ordinary and customary meaning of computer readable media, particularly when the specification is silent. *See* MPEP 2111.01.

When the broadest reasonable interpretation of a claim covers a signal *per se*, the claim must be rejected under 35 U.S.C. § 101 as covering non-statutory subject matter. *See In re Nuijten*, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter) and *Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 USC § 101*, Aug. 24, 2009; p. 2.

A claim drawn to such a computer readable medium that covers both transitory and non-transitory embodiments may be **amended** to narrow the claim to cover only statutory embodiments to avoid a rejection under 35 USC § 101 by adding the limitation "**non-transitory**" to the claim. *Cf Animals - Patentability*, 1077 *Off. Gaz. Pat. Office* 24 (April 21, 1987)(suggesting that applicants add the limitation "non-human" to a claim covering a multicellular organism to avoid a rejection under 35 USC § 101).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 1-2, 4-5 and 7-11** are rejected under 35 U.S.C. 102(e) as being anticipated by Rabie (US 7,333,438 B1).

Regarding claim 1, as shown in Fig. 3, Rabie teaches a method of reducing signaling load in a communication network (network 10 in Fig. 1) having a plurality of switches (edge nodes 16A-C and core nodes 18A-C, Fig. 1), said method comprising the steps of:

Receiving notification of a link failure at a switch (core node 18C, Fig. 1) adjacent to a link (link 28F, Fig. 1) associated with said network link failure (step 402, core node 18C must be notified of a link failure of 28F prior to determining the priorities of re-routing the connections after failure, col. 6, lines 43-47; see also col. 5, lines 27-36).

Identifying a plurality of circuits affected by said link failure by said switch (steps 406-412, core node 18C determines the connections to be recovered, col. 4, lines 41-44, 53-57, col. 5, lines 27-36 and col. 6, lines 44-62), wherein each circuit of said plurality of circuits comprises a path of a plurality of links (each affected connection comprises a path of a plurality of links connecting source and destination nodes, col. 3, lines 50-col. 4, lines 2, 41-44, 53-56, and col. 5, lines 27-36, 48-51).

Grouping affected circuits in accordance with one end-switch (edge node 16A, Fig. 1) to which a plurality of signaling messages have to be sent by said switch (step 414, as part of creating release message bundles, core node 18C has to group affected circuits to be sent to edge node 16A, col. 4, lines 41-col. 5, lines 5, col. 6, lines 55-col. 7, line 1 and col. 10, lines 31-33).

Bundling said plurality of signaling messages by said switch (step 414, col. 6, lines 55-col. 7, line 1).

Regarding claim 2, Rabie also teaches forwarding said bundled signaling messages to one of said plurality of switches (the bundle of release messages is sent to edge node 16A, step 706 in Fig. 6, col. 9, lines 24-27; see also col. 4, lines 41-col. 5, lines 5).

Regarding claim 4, Rabie also teaches that wherein said forwarding step forwards said bundled signaling messages for circuits with a common end switch (edge node 16A, Fig. 1). See step 706 in Fig. 6, col. 9, lines 24-27; see also col. 4, lines 41-44, col. 5, lines 27-36.

Regarding claim 5, Rabie also teaches that wherein said signaling messages are release messages (col. 6, lines 55-62).

Regarding claim 7, Rabie also teaches that wherein said forwarding forwards said bundled signaling messages for circuits with a common end switch (edge node 16A, Fig. 1) along a common path (step 706 in Fig. 6, col. 9, lines 24-27; see also col. 4, lines 41-44, col. 6, lines 63-66).

Claims 8, 9, and 10 are apparatus claims corresponding to method claims 1, 2, and 4, respectively, and are therefore rejected under the same reason set forth in the rejection of claims 1, 2, and 4, respectively with an addition of controller (inherent processor at core node 18C, Fig. 1 for controlling and performing the method steps set forth in claims 1, 2, and 4, respectively).

Claim 11 is a computer-readable medium corresponding to method claim 1 and is therefore rejected under the same reason set forth in the rejection of claim 1 (see also col. 2, lines 61-col. 3, lines 6).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claim 3** is rejected under 35 U.S.C. 103(a) as being unpatentable over Rabie (US 7,333,438 B1) in view of an art of record, Doshi (US 2004/0008619 A1).

Regarding claim 3, Rabie does not explicitly teach that wherein said forwarding forwards said bundled signaling messages in at least one signaling packet.

However, Doshi teaches that bundled signaling messages are forwarded in at least one signaling packet (paragraph 0031).

Given the teaching of Doshi, it would have been obvious to one skilled in the art at the time of the invention to modify the teaching of Rabie to include bundling signaling messages in a single signal packet such that said forwarding would forward said bundled signaling messages in at least one signaling packet as claimed. The suggestion/motivation to do so would have been to reduce amount of time required to process multiple messages (Doshi, paragraphs 0011-0012).

Response to Arguments

9. Applicant's arguments filed 11/23/2009 have been fully considered but they are not persuasive.

A. In the remarks on page 7 regarding claims 1, 8, and 11, the applicant argues that Rabie fails to teach "identifying a plurality of circuits affected by said link failure by said switch, wherein each circuit of said plurality of circuits comprises a path of a plurality of links" because the connections of Rabie are physical connections of the node, not the same as circuits defined by the applicant's claims.

In response, the examiner respectfully disagrees. In particular, Rabie clearly teaches that due to a link failure of connection 28F in Fig. 1, the core node 18C determines re-routing priorities and accordingly transmits release messages to the edge nodes 16A and 16B which are the source nodes of the affected source-destination connections supported by link 28F (col. 3, lines 50-col. 4, lines 2, 41-44, 53-56, col. 5, lines 27-36, 48-51, and col. 6, lines 44-62). Therefore, it is respectfully submitted that the claimed "identifying a plurality of circuits affected by said link failure by said switch, wherein each circuit of said plurality of circuits comprises a path of a plurality of links" is met.

In addition, since Rabie teaches that "the link 28F may support 1000 CBR VCCs, 4000 VBR VCCs and 10,000 UBR VCCs" (col. 5, lines 29-30), the argument on Rabie's physical connections of a node does not apply.

Accordingly, the rejection is maintained.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NITTAYA JUNTIMA whose telephone number is 571-272-3120. The examiner can normally be reached on Monday through Friday, 9:00 A.M - 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nittaya Juntima/
Primary Examiner, Art Unit 2462
3/23/2010